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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/841,255	04/24/2001	Nobuyuki Kambe	2950.01US02	6755

7590

01/06/2003

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EXAMINER

KOSLOW, CAROL M

ART UNIT

PAPER NUMBER

1755

DATE MAILED: 01/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/841,255

Applicant(s)

KAMBE ET AL.

Examiner

C. Melissa Koslow

Art Unit

1755

--Th MAILING DATE of this communication app ars on th cover sh et with the correspondenc address --

THE REPLY FILED 18 December 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

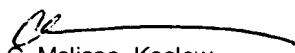
Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: \_\_\_\_\_

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☒ Other: See Continuation Sheet

  
C. Melissa Koslow  
Primary Examiner  
Art Unit: 1755

Continuation of 3. Applicant's reply has overcome the following rejection(s): the obviousness double patenting rejection over US Patent 6,290,735, the 35 USC 102(b) and 35 USC 103 art rejections based on EP 554,908 and the 35 USC 102(b) and 35 USC 103 art rejections based on Gutsch .

Continuation of 5. applicants' arguments are not convincing. With respect to applicants' arguments over the remaining obviousness-type double patenting rejections, applicants are referred to MPEP 804.02 for the reasons why the rejections are maintained and applicants' arguments are not convincing. Applicant's arguments over the rejections based on Shimizu et al and Sandhu et al in view of Rostoker and Rostoker et al are not convincing for the reasons given in the Final Office action. Applicants' arguments over the Rostoker patents are not convincing. The cited cases of In re Saase, In re Sun and Ex parte Logan not applicable here since they are based on applications, not patents. Applicants have not presented any evidence or case law showing that a single declaration is considered by the courts as a "preponderance of evidence" sufficient to invalidate a patent. Since the Examiner's arguments are based on the fact that patents are presumed valid, and not on any personal knowledge, it is improper to ask for an affidavit under 37 CFR 1.104(d)(2). It is noted applicant have now admitted on the record they do ~~not~~ consider the Rostoker patents as invalid. It is suggested applicants file a reexam over these patents so their validity can properly be determined. Finally, applicants comments with respect to prophetic examples are noted, but this does not overcome the rejections for the reasons given in the Final Office action.

Continuation of 10. Other: Gutsche is removed as a secondary reference in the 35 USC 103 rejection over Sandhu et al. Thus the rejection on page 17 of the final office action is over Sandhu et al in view of Rostoker et al or Rostoker.